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Supreme Court of the United States

OCTOBER TERM, 1949

No.....

KENOSHA MOTOR COACH LINES, Inc.,
Appellant,

vs.

PUBLIC SERVICE COMMISSION OF WISCONSIN,
Appellee.

Brief of Appellant On Appellee's Statement Opposing Jurisdiction

Introductory

The appellee's statement opposing jurisdiction, while not accompanied by a specific motion to dismiss, requests the Court to find that no substantial federal question is presented by the appellant. The effect of such assertion is equivalent to a motion to dismiss.

Nature of the Case

This is an appeal from a judgment of the Supreme Court of the State of Wisconsin, which upheld the jurisdiction of the Public Service Commission of Wisconsin to order the appellant to restore and thereafter render interstate freight service on its electric interurban railway lines.

The appellant by proper tariff filed with The Interstate Commerce Commission on September 10, 1947, sought to cancel all of its tariffs fixing rates for the transportation of interstate freight over its said line, located wholly in Wisconsin. That Commission suspended such proposed cancellations of tariffs on October 9, 1947. That Commission advised appellant on October 1, 1947 that in order to discontinue operation as to interstate or foreign commerce, it was necessary to file an application for appropriate authority. The appellant filed such an application with The Interstate Commerce Commission on January 19, 1948 and at the same time filed with that Commission an application to vacate its order suspending the tariff cancellations above mentioned.

The appellant has made no effort to physically abandon the railway line in question or to discontinue either freight or passenger service intrastate. The issue is one of cessation of interstate freight service only.

The Interstate Commerce Commission conducted a hearing on December 12, 1947 with respect to whether or not its order suspending the tariff cancellations of appellant should be lifted. It entered an order lifting such suspension on March 12, 1948.

On February 27th, 1948, The Interstate Commerce Commission dismissed the application for permission to

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abandon operations in interstate commerce for want of jurisdiction.

The appellant discontinued interstate freight service on May 5, 1948.

On September 1, 1948, the Wisconsin Public Service Commission issued an order directing the appellant to restore and thereafter render interstate freight service on its said railway line. Appellant's application for rehearing was denied September 17, 1948.

On October 5, 1948, appellant instituted a proceeding under Chapter 227, Wisconsin Statutes (Administrative Review) in the Circuit Court of Dane County, Wisconsin, to review the order of the Wisconsin Public Service Commission. The Circuit Court held the Wisconsin Commission was without jurisdiction to enter its order. An appeal to the Wisconsin Supreme Court was thereupon taken. That Court in a four-three decision held the Wisconsin Commission had jurisdiction to enter its order.

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THE RESPECTIVE CONTENTIONS OF THE PARTIES

The Appellant's Contention

The Statement of Jurisdiction filed by the appellant contends:—

1. That there is drawn in question by the decision of the Wisconsin Supreme Court the validity of a statute of the State of Wisconsin (Sec. 196.81) as now finally construed by said court, conferring jurisdiction upon the Public Service Commission of that state to order the restoration and rendition of interstate freight service by the appellant upon its interurban railway line.

2. That the order of the Public Service Commission of Wisconsin as sustained by the Wisconsin Supreme Court violates appellant's rights under Article XIV, Section 1, Constitution of The United States, by compelling it to render interstate freight service without providing compensation therefor, and

3. That the decision of the Wisconsin Supreme Court, conflicts with the decision of the federal courts, including this court, which hold that jurisdiction to regulate interstate commerce is exclusively vested in The Interstate Commerce Commission.

The Appellee's Contention

The appellee's statement opposing jurisdiction does not take issue with appellant's first contention. Appellee contends however, that the order of the Wisconsin Commission does not violate Article XIV, Sec. 1 of The Constitution of The United States. Appellee also asserts in effect that there is no conflict between the decision of the Wisconsin Supreme Court and those of the federal courts.

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ARGUMENT

The Decision of The Wisconsin Supreme Court Contravenes Article Fourteen of The Constitution of The United States

The appellant cited, in support of its claim that the order of the Wisconsin Commission violates Article XIV, Sec. 1, of The Constitution of The United States,

Southern Railway Co. v. Shealy, 18 Fed. 2nd 784.

In that case the South Carolina Commission had directed a railroad carrier to receive and deliver freight cars containing interstate freight upon certain of its side tracks. The Court said that the state obviously possessed no power to establish rates for such transportation. That power was lodged in The Interstate Commerce Commission. Had the state possessed such power, its order was void for lack of provision for compensation for such service and therefore took the carrier's property without due process of law in contravention of Article XIV, Section 1, of The Constitution of The United States.

The appellee contends to the contrary but cites no authority for its contention. It admits that the interstate service ordered by the Wisconsin Commission to be performed, can only be legally performed upon the filing and approval of rates therefor by The Interstate Commerce Commission.

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The Decision of The Wisconsin Supreme Court Conflicts With The Decision of The Federal Courts

The appellant in support of its contention that the decision of The Wisconsin Supreme Court conflicts with the decision of the federal courts, cites:

Texas v. Eastern Texas R. Co., 258 U. S. 204;

Southern Railway v. Reid, 222 U. S. 424; and

Southern Railway Co. v. Shealy, 18 Fed. 2nd 784 (D. C. E. Dist. So. Car.)

The appellee contends that certain authorities cited by it indicate a lack of such conflict. Strangely, appellee also cites *Texas v. Eastern Texas R. Co.*, 258 U. S. 204.

The facts in that case were that the railway owned and operated a line of railroad 30.3 miles in length wholly within the state of Texas. Its traffic was approximately three-fourths interstate and one-fourth intrastate. The railroad filed an application with The Interstate Commerce Commission to abandon and cease operations. The Commission permitted abandonment. Two actions were instituted, one, in the state court before the issuance of the order of The Interstate Commerce Commission to enjoin the railroad from ceasing to operate in intrastate commerce, and the second, in the federal court after the issuance of The Interstate Commerce Commission's order to set aside that order. Both were dismissed and appealed. This Court said (p. 216):

> "It is not questioned that Congress could, nor that that it did, authorize the Commission to sanction a discontinuance of this interstate and foreign business."

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This court then held that the Commission's order as authorized by Subsections (18, 19 and 20), Section 1, of The Interstate Commerce Act merely authorized cessation of interstate commerce and that the Commission was not clothed with similar powers over intrastate commerce.

In this case likewise, The Interstate Commerce Commission has authorized the cessation of interstate carriage by appellant, by permitting cancellation of interstate tariffs. The appellant here is continuing the rendition of intrastate carriage, hence, that is not in issue. The order of the Wisconsin Commission confirmed by the decision of the Wisconsin Supreme Court, orders the continuance of purely interstate commerce, which power this court in *Texas v. Eastern Texas R. Co.*, 258 U. S. 204 has clearly said is lodged solely in The Interstate Commerce Commission.

Therefore the decision of the Wisconsin Supreme Court conflicts directly with the pronouncement of this court in that case.

Appellant further cites *Southern Railway Co. v. Reid*, 222 U. S. 424.

In that case an Act of North Carolina required a railroad to receive freight for transportation, wherever tendered, and to transport the same. A shipper who had tendered freight for interstate transportation, which the railroad refused to accept, brought an action to recover damages and penalties under such act. The railroad did not operate to the point of destination or maintain connections there. It had no rates on file for such shipments.

This court said that Congress had required that schedules of rates for interstate transportation whether the road be single or forms a through route with another, be established and filed with the Interstate Commerce Commission,

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and no carrier may participate in interstate commerce without such compliance. This court held the state had no power to compel the carrier to engage in interstate commerce.

The order of the Wisconsin Commission in the instant case, as affirmed by the Wisconsin Supreme Court directs the appellant to do what this court said in *Southern Railway Co. v. Reid*, 222 U. S. 424 the state had no power to do. Thus, the decision of the Wisconsin Supreme Court conflicts with the decision of this court.

The appellant further cites *Southern Railway Co. v. Shealy*, 18 Fed. 2nd 784. In that case the South Carolina Commission relying on Section 1 (22) of the Act ordered the rail carrier to receive and deliver freight cars containing interstate freight tendered by another rail carrier, over and upon three of its side tracks at Union, South Carolina. The carrier contended the State Commission was without jurisdiction. The District Court comprised of Parker, Circuit Judge, and Watkins and Cochran, District Judges, stated that the only limitation on the jurisdiction of the Interstate Commerce Commission was set out in Section 1 (22) of the act. That subsection (22) removes from the jurisdiction of The Interstate Commerce Commission only the construction and abandonment of tracks of the character therein mentioned and does not mention their use or regulation which in other sections is specifically committed to the jurisdiction of the Federal Commission. Thus, the decision of the Wisconsin Supreme Court in the instant case which holds that the state has power to control the use and regulation of such carriers so far as interstate commerce is concerned, conflicts directly with the decision of the District Court in *Southern Railway Co. v. Shealy*, 18 Fed. 2nd 784.

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Congress Has Preempted Sole Control of Interstate Commerce

The appellee's statement opposing jurisdiction stresses the attitude of the appellant before the Interstate Commerce Commission in seeking the termination of its interstate activities. The analysis of the decisions cited by the appellee is not very precise and undoubtedly presents the cases used to the greatest advantage of those using them.

It is respectfully submitted that the cases cited by the appellant as being in conflict with the decision of the Wisconsin Supreme Court are much nearer the factual situation involved in the instant case than those cited by the appellee. No case approaching the exact facts has been decided by the United States Supreme Court. *Southern Railway Co. v. Reid*, 222 U. S. 424 comes nearest to the underlying principle. General principles and analogy have been the guide in the development of the cases considered by the Court.

The overriding consideration however, of all the cases has been that Congress had preempted control over everything connected with interstate commerce, and that the transportation act further asserted control over such purely intrastate activities as might adversely affect interstate commerce. Every case that discusses the construction of the transportation act in this respect, proceeds from this premise and accords to the act that broad purpose, in order to make it completely possible for Congress and its agency, The Interstate Commerce Commission, to obtain the objectives of providing a regulated transportation system completely under the control of a single authority.

It must be borne in mind that there is no question in this case of intrastate commerce or intrastate activities

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which might affect interstate commerce. The sole matter dealt with in the instant case involves pure interstate commerce.

In its decision the Wisconsin Supreme Court has disregarded the purpose that Congress had preempted control over everything connected with interstate commerce and has set up a thesis of its own which ignores the plain words and purposes of the statute as well as the governing standards adopted and constantly applied by all federal courts and The Interstate Commerce Commission. Thus, this Court has held that

> "the Transportation Act was remedial legislation and should therefore be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended."
>
> *Lawrence v. State Tax Commission of Mississippi*, 286 U. S. 276, at 311.

Even before this principle was concretely stated, this Court had applied the general considerations involved in such principle in *State of Texas v. Eastern Texas R. R. Co. et al*, 258 U. S. 204, which the appellant has heretofore cited and which the appellant contends is directly in conflict with the decision of the Wisconsin Supreme Court in the instant case. The Court said in that case referring to Section 1 (18-20):

> "Although found in the Transportation Act these paragraphs are amendments of the Interstate Commerce Act and are so styled. They contain some broad language but do not plainly or certainly show that they are intended to provide for the *complete* abandonment of a road like the one we have described. Only

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by putting a liberal interpretation on general terms can they be said to go so far. Being amendments of the Interstate Commerce Act they are to be read in connection with it and with other amendments of it. As a whole, these acts show that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. They contain many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce. Minnesota Rate Case, 230 U. S. 352, 418; Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co., 257 U. S. 563." (emphasis supplied)

As hereinabove stated, that statement was made with respect to a carrier whose interstate commerce the Court said was clearly subject to the Interstate Commerce Act. It operated wholly within a single state and the court was discussing the circumstances under which and the extent to which the Interstate Commerce Commission Act intended to reach the intrastate operations of such carrier. In that case the Court carefully drew the distinction between interstate commerce and intrastate commerce and asserted that where local interests cannot and will not trespass upon or affect the national interest, the local interest is recognized without hindrance from national legislation. This approach is summarized by Justice Brandeis in *Texas etc. Railroad v. North Side Railway,* 276 U. S. 476 at 479 and 480.

"The purpose of paragraphs 18 to 22 is to prevent interstate carriers from weakening themselves by constructing or operating superfluous lines, and to protect them from being weakened by another carrier's operat-

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ing in interstate commerce a competing line not required in the public interest. See Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co., 257 U. S. 563; The Chicago Junction Case, 264 U. S. 258; Railroad Commission of California v. Southern Pacific Co., 264 U. S. 331; Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co., 270 U. S. 266; Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co., 271 U. S. 244. Compare Colorado v. United States, 271 U. S. 153. The mere fact that a railroad lies wholly within one State and is to be built by an independent corporation, does not, of course, prevent the application of paragraphs 18 to 22. *If it undertakes to engage in interstate commerce, its operation becomes immediately a matter of national concern and it comes within the purview of those paragraphs. But Congress did not in terms prohibit wholly intrastate carriers from building lines to be used wholly in intrastate commerce. As long as the Northside Company confines its operations to intrastate commerce, it will not violate the federal law.* Compare Texas v. Eastern Texas R. R. Co., 258 U. S. 204; Railroad Commission of Texas v. Eastern Texas R. R. Co., 264 U. S. 79." (Emphasis supplied)

The note at page 480 illustrates the extent to which the Interstate Commerce Commission has applied the principles acknowledged by the Court.

The cases cited above reflect application and construction of Section 1 (18-21) of The Interstate Commerce Act and situations not mentioned in paragraph (22). However, a consistent application of the federal policy demands the same treatment of paragraph (22) as was implicit in the preceding paragraphs in order that uniformity of application will result. In fact, what was left implicit in paragraphs (18-21) until spelled out by this Court is made direct and positive by paragraph (22) when it deals only

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with "construction and abandonment" and says nothing about use and operations which are dealt with in paragraphs (18-21). In order that the policy of Congress may be uniformly applied in a field so completely occupied by the federal government as was this one, interstate *operations* of electric lines as distinguished from *construction* and *abandonment* of the trackage and facilities used, must be within the jurisdiction of The Interstate Commerce Commission. This view is fortified by the fact that *interstate operations* brings the carrier clearly within the many regulatory duties of The Interstate Commerce Commission spread throughout the act, of which the establishment of rates therefor, which are subject to its approval, is but one example. (See Appendix) On the other hand, abandonment of trackage, which necessarily causes intrastate operations of local interest to cease, is a matter of local concern. Congress properly felt that such local activities should be removed from the jurisdiction of The Interstate Commerce Commission by the enactment of paragraph (22).

In *Colorado v. United States,* 271 U. S. 153, this Court detailed the reasons for the exercising control over interstate commerce and says:

> "The sole objective of paragraphs (18-20) is the regulation of interstate commerce." (p. 163)

The Court there distinguished the case of *Texas v. Eastern Texas Railroad Co.,* 258 U. S. 204, wherein the railroad was permitted by the Interstate Commerce Commission to be relieved from continuing operations in interstate commerce.

In the *Texas case* (supra) the Court addressed itself to the question of whether the Commission had any power

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over intrastate commerce and further that the losses incurred in intrastate operations if continued would not be reflected in the accounts of any interstate carrier or burden or prejudice interstate commerce.

The conclusions of The Interstate Commerce Commission in the instant case in respect to the proceedings filed with it, at its suggestion, must be analyzed in this light. The letter quoted in the brief of the appellee demonstrates this, for it said that the filing by appellant of the cancellation of interstate tariffs then on file with the Interstate Commerce Commission would serve "to abandon the operations of the line as to interstate commerce." When interstate commerce had been abandoned, then the federal government's interest in this line ceased. It was then qualified to engage only in intrastate commerce. At that point the jurisdiction of The Interstate Commerce Commission to authorize the abandonment of the line likewise ceased according to the cases cited above because the intrastate commerce then performed was no longer chargeable to interstate operations. The prejudice to interstate commerce described in *Colorado v. United States,* 271 U. S. 153 was no longer existent, interstate commerce having ceased.

The appellee relies upon and quotes from *City of Yonkers v. United States,* 320 U. S. 685. The language quoted by the appellee omits language preceding it which shows that when the Court speaks of "local activities" it speaks in terms of intrastate activities. The constitutional questions referred to would arise only if the federal government attempted to regulate a distinctly local activity without any relation to a national interest.

The principal question in the *Yonkers case* (supra) was whether or not the railroad line was operated as a

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part of a general steam railway system of transportation. This Court reversed the district court which had dismissed a suit to enjoin an order of The Interstate Commerce Commission authorizing abandonment of the branch line, for the reason that the Commission had failed to find whether or not it was an electric branch line operated as a part of a general steam railway system of transportation. Furthermore, the case involved the complete abandonment of the line, not merely the cessation of interstate service over it, which is the issue in the instant case.

The situation that Congress contemplated by the exceptions contained in Section 1 (22) was one of "local interests" or "intrastate interests." The Court said in the *Yonkers case,* (supra),

> "The Congress has entrusted to the Commission the initial responsibility for determining through application of the statutory standards the appropriate line between the federal and state domains. Proper regard for the rightful concern of local interests in the management of local transportation facilities makes desirable the requirement that federal power be exercised only where the statutory authority affirmatively appears."

The appellee cites in support of its position *Western and Atlantic R. R. Co. v. Georgia Public Service Commission,* 267 U. S. 493. That case however, did not involve the discontinuance of purely interstate commerce on the side track in question; it involved actual abandonment, both "intra," "local" and interstate service. The carrier made two contentions; (1) that the power to order the establishment or abandonment of the side rack was in The Interstate Commerce Commission, and (2) that if it per-

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formed the switching service directed by the State Commission an unjust discrimination between interstate shippers would result. This Court said that the carrier was not in a position to appeal to it on the ground of undue discrimination until it had invoked the investigation and decision of The Interstate Commerce Commission respecting the same.

It must be borne in mind that the only way in which the appellant here can comply with the order of the Wisconsin Commission is by subjecting itself to the jurisdiction of The Interstate Commerce Commission with respect to its rates and facilities as well as the multitude of other regulations of that body, for the conduct of its interstate business. (See Appendix) In the *Georgia case* (supra) the carrier could completely comply with the Georgia Commission's mandate without doing anything before The Interstate Commerce Commission. Its rates on file applied equally whether it performed the service as it wished to, or as directed by the Georgia Commission.

The appellee contends that the exclusion provisions of Section 1 (22) are applicable notwithstanding the fact that interstate rates are involved and cites as authority therefor—*United States et al. v. State of Idaho,* 298 U. S. 105, and *United States v. Chicago, North Shore and Milwaukee R. R. Co.,* 288 U. S. 1.

In the *Idaho case,* (supra) The Interstate Commerce Commission authorized the carrier to abandon a branch line. The district court annulled such order. The case involved the complete abandonment of trackage, not merely the cessation of interstate service over the same. This Court said that the District Court's decision was predicated

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upon the proposition "that its continued operation or abandonment is of local and not of national concern." (109)

In the instant case we do not have the question of abandonment but merely the cessation of interstate service. The Court nowhere discusses the involvement of interstate tariffs in the *Idaho case* (supra).

In the *North Shore case,* (supra) the District Court for the Northern District of Illinois, had dismissed a suit to enjoin the carrier from issuing securities or assuming obligations or liabilities in respect to the securities of others without authority from The Interstate Commerce Commission.

The case does not do what the appellee claims for it.

In the instant case the appellant cannot obey the Wisconsin Commission's order, as affirmed by the Wisconsin Supreme Court, without submitting itself to The Interstate Commerce Commission, and subjecting itself to the numerous regulatory powers of that body, including regulation of tariffs and rules upon which the ordered service would be performed. It was the view of the Chief Justice and two Associate Judges of the Wisconsin Supreme Court, who dissented, that because of that fact The Interstate Commerce Commission had exclusive jurisdiction.

In the *North Shore case,* (supra) the carrier had issued securities under the authority of the Wisconsin and Illinois Commissions, in which states it operated. Compliance with the authorizations of the State Commissions, did not necessitate submission to The Interstate Commerce Commission for regulation of any act or service directed by the order of the State Commissions. Section 1 (22) was not involved in the case. Interstate tariffs were not involved.

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Conclusion

As above outlined the decision of The Supreme Court of Wisconsin conflicts with the decisions of this court so that substantial federal questions are involved.

Respectfully submitted,

ADOLPH J. BIEBERSTEIN

R. M. RIESER
Counsel for Appellant.

August 3, 1949

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APPENDIX

Statutes Involved

Article XIV of The Constitution of The United States, Section 1

> "* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Sec. 1 (1) Interstate Commerce Act; 49 USCA 1 (1)

> "That the provisions of this part shall apply to common carriers engaged in—
>
> "(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment;"

Sec. 1 (9) Interstate Commerce Act; 49 USCA 1 (9)

> "Any common carrier subject to the provisions of this part, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability with-

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out discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the Commission as provided in section thirteen of this part, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section fifteen of this part, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission other than orders for the payment of money."

Sec. 1 (18) Interstate Commerce Act; 49 USCA 1 (18)

"No carrier by railroad subject to this chapter shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this chapter over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or

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future public convenience and necessity permit of such abandonment."

Sec. 1 (20) Interstate Commerce Act; 49 USCA 1 (20)

"The commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both."

Sec. 1 (22) Interstate Commerce Act; 49 USCA 1 (22)

"The authority of the commission conferred by paragraphs (18) to (21), both inclusive, shall not ex-

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tend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

Sec. 6 (1), Interstate Commerce Act; 49 USCA 6 (1)

"Every common carrier subject to the provisions of this chapter shall file with the commission created by this chapter and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares, and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight,

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respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this chapter."

Sec. 6 (7) Interstate Commerce Act; 49 USCA 6 (7)

"No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this part, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs."

Sec. 15 (7) Interstate Commerce Act; 49 USCA 15 (7)

"Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but

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upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. * * * (remaining portion omitted)"

Sec. 196.81, Wisconsin Statutes, 1947

"No public utility or railroad as defined in chapters 195 and 196 shall abandon or discontinue any line, branch line or extension or service thereon without first securing the approval of the commission. In granting its approval, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. Any public utility or railroad abandoning or discontinuing in pursuance of authority granted by the commission shall be deemed to have waived any and all objections to the terms, conditions or requirements imposed by the commission in that regard. Nothing herein contained, however, shall be construed to eliminate the necessity of obtaining the consent of the proper municipal authorities as required by section 193.11. The provisions of this section shall apply only so far as the constitution and laws of the United States permit."

BLEED THROUGH